

ORIGINAL SEALED

EDWARD H. KUBO, JR. #2499
United States Attorney
District of Hawaii

RONALD G. JOHNSON #4582
Chief, Major Crimes

AMY K. OLSON #9103
Assistant U.S. Attorney
Room 6100, PJKK Federal Building
300 Ala Moana Blvd., Box 50183
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
E-mail: Amy.Olson@usdoj.gov

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	MAGIS. NO. 09-0724 KSC
)	
Plaintiff,)	CRIMINAL COMPLAINT
)	
VS.)	
)	
RICHARD DAVID MITCHELL,)	
)	
Defendant.)	
)	

CRIMINAL COMPLAINT

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief.

In or about May 2008, in the District of Hawaii, Richard David MITCHELL, a United States citizen whose last known residence was in the District of Hawaii, did travel in foreign commerce to Cambodia; and on or about August 28, 2008, in Cambodia, Richard David MITCHELL, did knowingly and intentionally engage in illicit sexual conduct with a minor, as defined in 18 U.S.C. § 2423(f)(1) and (f)(2).

All in violation of Title 18, United States Code, Section 2423(c).

I further state that I am a Special Agent with Immigration and Customs Enforcement and that this Complaint is based upon the facts set forth in the attached "Agent's Affidavit in Support of Criminal Complaint", which is incorporated herein by reference.


BRUCE LAW
COMPLAINANT

Sworn to before me and
subscribed in my presence,
this 25th day of August
2009, at Honolulu, Hawaii.


BARRY M. KURREN
UNITED STATES MAGISTRATE JUDGE

AGENT'S AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

BRUCE LAW, after being duly sworn, deposes and states as follows:

1. I am a Special Agent of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), and have been employed since February 2004. I am assigned to the ICE Special Agent in Charge, Honolulu office of the DHS, and have been involved in numerous child exploitation and child pornography investigations. I have received and continue to receive training in the areas of general law enforcement, criminal investigative techniques, interviews and interrogations, and criminal law. During the course of my duties as a Special Agent, I have personally conducted and participated in the investigation of criminal violations.

2. The information contained in this affidavit is derived from personal investigative knowledge, information related to me by other law enforcement personnel, and information obtained from official records and files. I have not included every fact known to me relating to this investigation, but have aimed to include information sufficient for a finding of probable cause.

3. This affidavit is made in support of a Criminal Complaint for an Arrest Warrant for Richard David MITCHELL (age 61), for violation of Title 18, United States Code, Sections 2423(c) and 2423(f)(1) and (2). Probable cause exists based on the facts and circumstances of the investigation as set forth in the paragraphs that follow.

4. On January 29, 2009, I received a request for assistance from ICE Attache Bangkok, Thailand, regarding a Richard David MITCHELL, a United States citizen, who was and still is in Cambodian custody for procuring sex from a minor. Since that date, I have participated in an investigation of MITCHELL for violation of Title 18, United States Code, Sections 2423(c) and 2423(f)(1) and (2). I have reviewed Cambodian police reports, traveled to Cambodia, and interviewed MITCHELL, Cambodian authorities, medical doctors, and others, among other investigative efforts.

5. On August 28, 2008, Richard David MITCHELL was arrested in Phnom Penh, Cambodia by Cambodian authorities, for procuring sex with a minor under the age of fifteen years, in

violation of Cambodian law. Two people had seen MITCHELL engaging in sexual conduct with a young Cambodian girl whose initials are S.M., and who I believe to have been approximately 12 years old at the time of the incident. The following summary is based on my review of the Cambodian reports, discussions with Cambodian authorities, interviews conducted by myself and other ICE agents, among other things.

6. A witness named Sothy DUONG reported to Cambodian officials that on August 28, 2008, at approximately 10:20 p.m., DUONG was sitting in a parked car near the Ministry of Post and Telecommunications ("MPT") building, street 102, Sangkat Wat Phnom, Khan Daun Penh, Cambodia. DUONG saw a foreigner (later identified as MITCHELL) driving on a motorbike with a girl (later identified as S.M.) who appeared to be about 12 years old. The motorbike pulled to a stop near the MPT building. MITCHELL, who was sitting on the motorbike, turned around and unzipped his pants, exposed his penis, and S.M. then performed oral sex on MITCHELL. MITCHELL then used his hand to fondle S.M.'s vagina. Both of them then got off the motorbike and then S.M. laid on the street curb. MITCHELL lifted S.M.'s dress and performed oral sex on her. Both of them then returned to the motorbike and S.M. again performed oral sex on MITCHELL. While observing this activity, DUONG contacted the police. The police arrived and arrested MITCHELL.

7. Another witness, named Polen VATH, was working as a private security guard at the MPT building and also witnessed MITCHELL and the girl engaging in oral sex. VATH announced what he observed on his handheld radio.

8. Cambodian National Police Chief Warrant Officer Bun Khuon Nguon received the call over his police radio. He arrived on scene within approximately a minute and observed MITCHELL sitting on the motorbike side-saddled, with S.M. facing him standing between his legs.

9. S.M. was interviewed after the incident by Cambodian national police. According to the Cambodian police whom I interviewed, S.M. identified herself as being twelve years old. S.M. told Cambodian police that MITCHELL had given her a hand signal before she got on his motorbike to indicate that he would pay her 10,000 Riels (which is approximately two to three U.S. Dollars). During another interview with other officials the following day, S.M. said that another man had promised to pay her if she went with MITCHELL. She also stated that MITCHELL bought her a bowl of rice.

10. On August 29, 2008, S.M. was examined by Laura Watson, a medical doctor from the United Kingdom, practicing medicine in Cambodia with AEA International SOS Clinic. I have reviewed Dr. Watson's report and interviewed Dr. Watson. S.M. told Dr. Watson that she was born in the year of the rat and that she had not yet experienced menstruation. The medical examination revealed that S.M. weighed approximately 71.5 pounds and was just under four foot, five inches tall. Based on her experience and the medical examination, Dr. Watson opined that S.M.'s physical appearance and development appeared consistent with that of a person twelve years of age.

A team of three medical doctors from Tripler Army Medical Center in Hawaii have also reviewed Dr. Watson's medical report, as well as wrist and dental x-rays that Dr. Watson took during her examination. The Tripler doctors concurred that the medical evidence was consistent with a child approximately 12 years old.

11. Based on my Internet research, I believe that the year of the rat corresponds, with respect to S.M., to 1996, making S.M. twelve to thirteen years old at the time of the above-described incident. Cambodia follows the Chinese zodiac. Under the Chinese zodiac, there are twelve zodiac signs with animal names. The "year of the rat" comes around every twelve years. The last "year of the rat" was 2008 and before that, 1996 and 1984.

12. While the case against MITCHELL was pending in Cambodia, an NGO operating in Cambodia, Action Pour Les Enfants (APLE), obtained a copy of a "family book" which they say lists S.M. as having been 16 at the time of the incident on August 28, 2009. However, I have spoken with other ICE agents who have investigated similar cases in Cambodia as well as Cambodians, and they have informed me that "family books" are unreliable and are often and easily manipulated.


13. On March 18, 2009, I interviewed Mitchell at Preysar Prison, Phnom Penh, Cambodia. Mitchell admitted receiving oral sex from S.M., but denied soliciting her services. Mitchell instead said S.M. had approached him and initiated the oral sex against his will. Mitchell said that his residence is in Waimea, Hawaii. He stated that he traveled to Cambodia in May 2008, and had been in Cambodia as a tourist from May 2008 until his arrest. ICE travel records indicate that Mitchell departed Honolulu, Hawaii on May 11, 2008, on a flight to Taipei and then on to Thailand.

14. At the time of Mitchell's arrest, Cambodian authorities found three condoms and two "Zeagra" tablets on Mitchell's person. According to the Internet website zeagra.com, which purports to be the website for Zeagra Health Care (Cambodia) Ltd., Zeagra is a medicine used to treat erectile dysfunction. In a search of the boarding house room in which Mitchell is believed to have been staying, Cambodian authorities found 15 condoms, four small bottles of lubricant, an "artificial penis", among other things.

15. Based on checks of databases, MITCHELL's last known residence is 64-5053 Kalake Street, Kamuela, Hawaii. I visited that residence in July 2009 and spoke with a person living in part of the residence. She confirmed that it was MITCHELL's residence and that he would be back from Cambodia in a few months.

16. Based on the foregoing, and on my training and experience, I believe probable cause exists that Richard David MITCHELL, a United States Citizen, did travel to Cambodia in foreign commerce in May 2008; and on August 28, 2008, did knowingly and intentionally engage in Cambodia in "illicit sexual conduct" with another person, as that term is described in Title 18, United States Code, Sections 2423(f)(1) and (f)(2); in violation of violation of Title 18, United States Code, 2423(c).

FURTHER AFFIANT SAYETH NAUGHT.


BRUCE LAW

Special Agent, ICE

Based upon the foregoing, the undersigned Judicial Officer finds that there is probable cause to believe that defendant above-named committed the crime charged in the Criminal Complaint, this 25th day of August, 2009 at 4:50 PM a.m./p.m.

Subscribed and sworn to before me
this 25th day of August 2009.


BARRY M. KURREN
United States Magistrate Judge
District of Hawaii